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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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PAUL-KENNETH CROMAR,  
  
Plaintiff,

v.

WANDA I. MANLEY,  
  
Defendant.

**ORDER GRANTING [6] UNITED  
STATES' AND FEDERAL  
DEFENDANT WANDA I. MANLEY'S  
MOTION TO DISMISS**

Case No. 2:20-cv-00224-DBB

District Judge David Barlow

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The United States of America and federal defendant Wanda I. Manley (Movants) filed the Motion to Dismiss<sup>1</sup> seeking dismissal of Plaintiff Paul Kenneth Cromar's complaint. Specifically, Movants seek dismissal of this action under [Federal Rules of Civil Procedure 12\(b\)\(1\)](#), 12(b)(5), and 12(b)(6) because the complaint fails to set forth any grounds that the Movants have waived sovereign immunity and fails to state a claim upon which relief can be granted.<sup>2</sup> Movants also offer that Plaintiff failed to properly serve the Movants.<sup>3</sup>

Plaintiff did not respond within the required time and the Movants filed the Request to Submit for Decision.<sup>4</sup>

The court has reviewed the Motion to Dismiss, including the case law and statutes cited therein. It is well settled that the United States or its officers may not be sued without consent

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<sup>1</sup> United States' and Federal Defendant Wanda I. Manley's Motion to Dismiss, [ECF No. 6](#), filed April 10, 2020.

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.*

<sup>4</sup> United States' and Federal Defendant Wanda I. Manley's Request to Submit Motion to Dismiss for Decision, [ECF No. 9](#), filed May 20, 2020.

and the waiver of sovereign immunity.<sup>5</sup> In such instances the court lacks jurisdiction over the subject matter of the action and dismissal is required.<sup>6</sup> The party seeking to file suit against the United States and its officers has the burden of establishing that the court does have jurisdiction.<sup>7</sup> By failing to respond to the Movants and their invocation of sovereign immunity, Plaintiff has failed to carry the required burden. The court lacks subject matter jurisdiction and dismissal without prejudice is appropriate.

IT IS HEREBY ORDERED that the Motion to Dismiss<sup>8</sup> is GRANTED. Plaintiff's complaint is DISMISSED WITHOUT PREJUDICE.

The clerk is directed to close the case.

Signed October 7, 2020.

BY THE COURT



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David Barlow  
United States District Judge

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<sup>5</sup> See *United States v. Dalm*, 494 U.S. 596, 608 (1990).

<sup>6</sup> *United States v. Nordic Village, Inc.*, 503 U.S. 30, 34 (1992).

<sup>7</sup> See *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994).

<sup>8</sup> United States' and Federal Defendant Wanda I. Manley's Motion to Dismiss, [ECF No. 6](#), filed April 10, 2020.